

In the Matter of J. FREEZER & SON, INC. and UNITED GARMENT  
WORKERS OF AMERICA

*Case No. R-1463.—Decided October 6, 1939*

*Men's Shirt Manufacturing Industry—Investigation of Representatives:* controversy concerning representation: employer's refusal to grant recognition of union until certified—*Unit Appropriate for Collective Bargaining:* no dispute as to; all piece-rate and hourly rate production employees at the Radford plant of the Company, excluding clerical employees, supervisory employees, machinists, machinists' helpers, watchmen, and persons on the "reserve list"—*Representatives:* proof of choice: introduction of union applications and union membership book; authenticity and probative value questioned; question concerning representation can best be resolved by a secret ballot—*Election Ordered*

*Mr. Reeves R. Hilton*, for the Board.

*Gallant & Steinberg*, by *Mr. Frank Steinberg*, of New York City, for the Company.

*Mr. David W. Crawford*, of Erie, Pa., for the Union.

*Mr. Howard S. Friedman*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 30, 1938, United Garment Workers of America, herein called the United, filed with the Regional Director for the Fifth Region (Baltimore, Maryland) a petition, and on August 25, 1939, an amended petition, alleging that a question affecting commerce had arisen concerning the representation of employees of J. Freezer & Son, Inc., Radford, Virginia, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 11, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, ordered an investigation and authorized the Regional Director to conduct it, and to provide for an appropriate hearing upon due notice.

On August 25, 1939, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United, and upon the Amalgamated Clothing Workers of America, herein called the Amalgamated.<sup>1</sup> Pursuant to notice, a hearing was held on September 11, 1939, at Radford, Virginia, before Earl S. Bellman, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel and the Union by a representative; all participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

J. Freezer & Son, Inc., is a New York corporation engaged in the manufacture and sale of men's shirts, having its principal manufacturing plant in Radford, Virginia. It also owns a manufacturing plant in Floyd, Virginia, and one other plant the location of which is not indicated. The Company maintains a sales office located at 1150 Broadway, New York City. This proceeding concerns only the plant at Radford, Virginia, herein called the Radford plant.

The principal raw material used by the Company is cotton cloth which is purchased from outside the State of Virginia. In 1938, its purchases of raw materials for use at the Radford plant exceeded \$400,000.

All the Company's sales are made through its New York City office. Practically all its products are shipped to States other than Virginia. In 1938, sales of goods manufactured by the Company at the Radford plant exceeded \$800,000. The Radford plant employs approximately 350 persons.

The Company stipulated at the hearing that, for the purpose of this proceeding, the Board has jurisdiction over it.

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<sup>1</sup> The Regional Director communicated with Clyde M. Mills, Southern Director of the Amalgamated Clothing Workers of America, concerning the intentions of the Amalgamated with regard to this proceeding. On September 9, 1939, a reply was received from Mr. Mills, stating that the Amalgamated did not contemplate intervening in this case. No representative of the Amalgamated appeared at the hearing.

## II. THE ORGANIZATION INVOLVED

United Garment Workers of America is a labor organization, affiliated with the American Federation of Labor, admitting to its membership all piece-work and hourly production employees in the garment industry, exclusive of supervisors, maintenance men, truck drivers, and firemen.

## III. THE QUESTION CONCERNING REPRESENTATION

On September 20, 1938, a conference was held among representatives of the United, the Amalgamated, the Company, and the Board for the purpose of arranging a consent election with both unions on the ballot. Subsequently the Amalgamated withdrew from participation<sup>2</sup> and the consent election did not materialize. After the Amalgamated's withdrawal the Regional Director sought to secure the Company's consent to an election with only the United on the ballot. The Company refused to agree to such an election, taking the position that the names of both unions should be on the ballot. As we have heretofore indicated the Amalgamated, although served with notice of the proceeding, did not appear and has not asserted herein any claim to represent the Company's employees.

Counsel for the Company stipulated at the hearing that the Company has refused to recognize the United as exclusive bargaining representative until it is certified by the Board.

We find that a question has arisen concerning the representation of employees of the Company.

## IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE APPROPRIATE UNIT

At the hearing the United and the Company agreed that all piece-rate and hourly rate production employees at the Radford plant of the Company, excluding clerical employees, supervisory employees, machinists, machinists' helpers, watchmen, and persons on the "reserve

<sup>2</sup> The record does not disclose the reason for the Amalgamated's withdrawal.

list”<sup>3</sup> constitute a unit appropriate for the purposes of collective bargaining. We see no reason for departing from the unit thus agreed upon by the parties.

We find that all piece-rate and hourly rate production employees at the Radford plant of the Company, excluding clerical employees, supervisory employees, machinists, machinists’ helpers, watchmen, and persons on the “reserve list,” constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

At the hearing the United introduced in evidence signed, but undated, applications for membership of a substantial majority of the Company’s employees at the Radford plant on the pay rolls for August 26, 1938, and August 25, 1939. The United also produced portions of its membership record book, taken from the signed applications, which indicate that at least 248 employees joined the United prior to August 26, 1938.

While disputing the authenticity of the signatures on the applications, the Company contests the United’s claims particularly on the ground *inter alia* that the signatures on a majority of the applications were obtained more than a year ago and should not be taken as probative of the signers’ present desire to be represented by the United. Under the circumstances, the question concerning representation can best be resolved by a secret ballot. We shall accordingly direct that an election by secret ballot be held.<sup>4</sup>

We shall direct that employees at the Radford plant of the Company within the appropriate unit who were employed by the Company during the pay-roll period immediately preceding the Direction of Election, hereinafter set forth, including employees who did not work during such pay-roll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding any such employees who have since quit or been

<sup>3</sup> It was established that the Company keeps a “reserve list” of persons who have voluntarily left its employ. If additional employees are needed, the Company offers employment to those on the “reserve list.” The Company stated, however, that persons on this list do not have any particular claim to a job and that it did not consider them as retaining their status as employees.

<sup>4</sup> *Matter of Armour & Company and United Packinghouse Workers, Local Industrial Union No. 13 of Packinghouse Workers Organizing Committee, affiliated with C. I. O.*, 13 N. L. R. B. 567; *Matter of The Cudahy Packing Company and United Packinghouse Workers of America, Local No. 21, of the Packinghouse Workers Organizing Committee, affiliated with the Congress of Industrial Organizations*, 13 N. L. R. B. 526.

discharged for cause, shall be eligible to vote to determine whether or not they wish to be represented by the United.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of J. Freezer & Son, Inc., Radford, Virginia, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All piece-rate and hourly rate production employees at the Radford plant of the Company, excluding clerical employees, supervisory employees, machinists, machinists' helpers, watchmen, and persons on the "reserve list," constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, an election by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Election under the direction and supervision of the Regional Director for the Fifth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among all piece-rate and hourly rate production employees of J. Freezer & Son, Inc., Radford, Virginia, who were employed by the Company during the payroll period immediately preceding the date of this Direction of Election, including employees who did not work during such payroll period because they were ill or on vacation and employees who were then or have since been temporarily laid off, but excluding any such employees who have since quit or been discharged for cause and excluding clerical employees, supervisory employees, machinists, machinists' helpers, watchmen, and persons on the "reserve list," to determine whether or not they desire to be represented by the United Garment Workers of America for the purposes of collective bargaining.